(5) (8)

Nos. 85-1239 and 85-1406

Supreme Court, U.S.
FILED
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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

AMOCO PRODUCTION COMPANY, ET AL, PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

PEOPLE OF THE VILLAGE OF GAMBELL, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITIONS FOR A WRIT OF CERTIORARI FILED JANUARY 22, 1986 (NO. 85-1239), AND FEBRUARY 21, 1986 (NO. 85-1406)
CERTIORARI GRANTED JUNE 2, 1986

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JOINT APPENDIX

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

A85-184CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL,
AN ALASKAN NATIVE IRA ASSOCIATION,
PEOPLE OF THE VILLAGE OF STEBBINS,
AN ALASKAN NATIVE IRA ASSOCIATION,
PLAINTIFFS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR

ARCO ALASKA INC., EXXON CORP. MOBIL
OIL CORP., SHELL OIL CO., TEXACO INC.
AND UNION OIL OF CALIFORNIA,
DEFENDANT-INTERVENORS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
3/4/83	1	Complaint For Preliminary And Permanent Injunctive Relief Filed.
	6	Filed Motion For An Order Granting A Preliminary Injunction.
	7	Filed Memorandum In Support Of Plaintiffs' Request For A Preliminary Injunction.
		Issued Summons to U.S. DEPT OF INTERIOR, JAMES WATT, UNITED STATES OF AMERICA C/O U.S. ATTY, UNITED STATES OF AMERICA C/O US ATTY ANCH

DATE	NR	PROCEEDINGS
3/10/83	12	Filed Motion For Leave To Intervene As Defendants.
	15	Filed Statement Of Federal Defendants' Non-Opposition To Motion For Leave To Intervene As Defendants.
	16	Filed Statement Of Plaintiffs' Non-Opposition To Motion For Leave To Intervene As Defendants.
	17	Filed Defendant-Intervenors' Answer To Complaint.
3/14/83	21	Filed Order Denying Preliminary Injunction.
	22	Filed Plaintiff's Notice Of Appeal.
3/16/83	24	Filed Memorandum Of Defendant-Intervenors In Opposition To Motion For Preliminary Injunction with Exhibit 1—The "FEIS" Exhibit 2—Secretarial Issues Document, Exhibit 3—The "DEIS", Exhibit 4—Final Notice Of Sale, Exhibit 5—Consistency Determination accompanying same.
3/17/83	32	Filed Motion To Dismiss.
	33	Filed Federal Defendant's Memorandum In Support Of Motion To Dismiss And In Opposition To Motion For Preliminary Injunction.
	35	Filed Plaintiff's Reply To Memorandum Opposing Their Motion For A Preliminary Injunction.
3/29/83	43	Filed Plaintiff's Motion For Summary Judgment.
	44	Filed Plaintiff's Memorandum In Support Of Their Motion For Summary Judgment with exhibits D, E, F, G, H, I and J attached.

DATE	NR	PROCEEDINGS
4/1/83	46	Filed Memorandum Of Defendant-Intervenors In Opposition To Plaintiffs' Motion For Summary Judgment with exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18
4/4/83	48	Filed Minute Order From Chambers setting oral argument on plt's motion for summary judgment for April 1, 1983 at 10:30 am.
4/4/83	49	Filed Court minutes of April 1, 1983 hearing of oral argument on Plaintiff's Motion for summary judgment.
4/4/83	52	Filed in Anchorage the court's Memorandum And Order denying Plt's motion for summary judgment as to both claims for relief.
4/7/83	54	Filed Federal Defendants' Response To Plaintiffs' Motion For Summary Judgment with Certificate of service and exhibits A thru E attached.
4/13/83	56	Filed Notice Of Appeal by plaintiffs, from Order Dismissing the Complaint. Cys to attys
	57	Filed Notice Of Appeal by plaintiffs, from Order Denying Summary Judgment. Cys attys
4/14/83	59	Filed Memorandum And Order granting summary judgment to federal defendants.
	60	Filed Judgment granting summary judgment to federal defendants, copies distributed to attorney. Case closed
	62	Filed plt's Application For Order Granting Injunction Pending Appeal.

DATE	NR	PROCEEDINGS
4/14/83	63	Filed Memorandum In Support Of Plaintiffs' Application For Injunction Pending Appeal. (lodged order)
	66	Filed Federal Defendants' Memorandum In Opposition To Plaintiff's Motion For Injunction Pending Appeal, with certificate of service attached.
	67	Filed Memorandum Of Defendant-Intervenors In Opposition To Plaintiff's Motion For Injunction Pending Appeal with exhibit 1 and Affidavit Of Service By Hand Delivery attached.
	69	Filed Memorandum And Order denying pltf's mtn for an injunction pending appeal.
4/18/83	71	Fld CA Order enjoining appellees from awarding any leases on Lease Sale 57; oral argument set 11 am on 4-26-83 in SF—cy: Judge
5/17/83	77	Fld CA Order denying application for injunction; set briefing schedule—cy: judge
1/8/85	84	Fld JUDGMENT from CA w/attach opinion affirming D.C. in part, reversed in part and remanded. Cy: Joan Lee, Donald Cooper, Cynthia Pickering, Carl Bauman & Judge von der Heydt.
4/3/85	85	Fld pltfs' mot for prelim injunct on remand w/atch memo & exhibits (exhibits in red folder behind case file).
4/19/85	90	Fld intvnr/defts' memo in opp to mot for prelim injunct w/atch exhibits.
4/23/85	91	Fld fed defts' opp to mot for prelim injunct w/atch exhibits.

DATE	NR	PROCEEDINGS
5/1/85	93	Fld intvnr/defts' notice of filing orig afdvt of Hugh P. Bushnell.
5/2/85	96	Fld pltfs' resp to defts' opp to mot for prelim injunct w/atch exhibits.
5/9/85	102	Fld D-3 to D-8s' mot for leave to file intervenor's response re plts' reply w/attach response & affs.
5/23/85	103	Fld cy MEMO & ORDER re A85-201/A85-184 CIV, pltf mot for PI DENIED. cy-cnsl.
5/24/85	104	Fld pltf's Notice of Appeal re Order of 5/23/85, dkt#103. cc: cnsl.
5/30/85	105	Fld MO granting inter-defts' mot for leave to file add material. cc: cnsl.
5/30/85	106	Fld MO stating court will not entertain mot for stay pending appeal. cc: cnsl.
1/3/86	111	FLD CA Judgment. Remanded & reversed. cy: James Bamberger, Bruce Landon, Carl Bauman, Judge von der Heydt.
1/8/86	112	Fld PRELIM INJUNCTION. No bond required at this time. Cy Cnsl & A85-201 CIV. Cy O&J 2685.
1/31/86	113	Fld joint mot for stay.
1/31/86	113	Fld ORDER approving joint mot for stay. Cy Cnsl.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

A85-201CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS

AMOCO PRODUCTION CO. ARCO ALASKA, INC., EXXON CORP., SHELL WESTERN E&P, INC., OHIO ALASKA PETROLEUM CO., TEXACO, INC., AND UNION OIL CO. OF CALIFORNIA, DEFENDANT-INTERVENORS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
4/25/85	1	Fld cmplt. Issued summs.
4/25/85	2	Fld pltf mot for PI w/exhbs A-J (exhbs fld in red binders case file) w/memo.
4/25/85	3	Fld pltf req to consolidate this action w/A85-184 CIV.
5/6/85	4	Fld stip re application for intervention as defts & stip for ext of time for answer dedlne to match fed defts due date.
5/8/85	6	Fld fed defts oppo to pltf request to consolidate.
5/9/85	4	Fld ORDER granting intervention of add'l defts. cy cnsl

DATE	NR	PROCEEDINGS
4/9/85	7	Fld D-3 thru D-9 oppo to pltf mot for consolidation.
4/9/85	8	Fld pltf resp to deft oppo to req to consolidate.
4/10/85	9	Fld fed deft oppo to mot for PI w/exhbs (exhbs in red binder behind case file) (exhbs #2, #4, #5, #6-#10, no #1 or #3 fld)
4/10/85	11	Fld D-3 thru D-9 memo in oppo to pltf mot for PI affs & exhbs D, E, & F & G (exhbs fld in red binder behind case file)
4/17/85	12	Fld pltf resp to deft oppo to mot for PI w/exhbs.
4/17/85	13	Fld City of St. Paul mot for lv to file amicus curiae brief w/memo & exhb (table of contents of brief).
4/21/85	14	Fld MO; this case hereby assigned to Judge vdH. cy cnsl, Judge vdH.
4/23/85	17	Fld MEMO & ORDER; pltf mot for PI denied. cy cnsl, A85-184 CIV.
4/30/85	18	Fld MO; City of St. Paul's mot for lv to file amicus brief GRANTED, pltf mot to consol hrings of pnding mots for PI in A85-201/A85-184 GRANTED, cases otherwise not consol. cy cnsl.
4/30/85	19	Fld MO; crt will not entertain mot for stay pending appeal. cy cnsl, A85-184.
6/24/85	20	Fld D-1 & D-2's answer.
7/2/85	22	Fld D-3 thru D-9 answer
7/19/85	22	Fld Desig. of record by Intervenor-Appellee Amoco Prod. Co.
7/30/85		Record mailed to 9CAA
1/8/86	26	Fld cert cy PRELIM INJUNC. No bond required at this time. Cy Cnsl & O&J 2685.

DATE	NR	PROCEEDINGS
1/31/86	27	Fld defts' joint mot for stay.
2/3/86	27	Fld ORDER granting stay until 3 weeks after U.S. Supreme Court decides whether it will accept certiorari on decision of 9th Circuit. cc:cnsl

IN THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE NINTH CIRCUIT

85-3877

PEOPLE OF THE VILLAGE OF GAMBELL, PEOPLE OF THE VILLAGE OF STEBBINS, AND NUNAM KITLUTSISTI, APPELLANTS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, APPELLEES

ARCO ALASKA, INC., AMOCO PRODUCTION CO., ET AL., INTERVENOR-APPELLEES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6/3/85	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. EMK
6/3/85	Filed aplt's emergency motion for injunction pending appeal. (CIVATT) 6/1 -dmf-
6/3/85	Filed aplees' (Amoco Production, et al) memorandum in opposition to motion for injunction pending appeal. (CIVATT) 6/3 -dmf-
6/4/85	Filed federal aplees' opposition to motion for injunction pending appeal. (CIVATT) 6/4 -dmf-
6/5/85	Filed order (SNEED, NELSON, BEEZER) Exploration of the Alaska Continental Shelf pursuant to Lease Sales No. 57 and No. 83 by the intervenors-appellees oil companies is temporarily stayed pending further order of the court. sm Misc. MoCal 6/5

DATE	PROCEEDINGS
6/6/85	Filed order (SNEED, NELSON, NORRIS) Plaintiff's emergency motion for injunction pending appeal is denied. The temporary stay entered June 5, 1985, has expired. Within 7 days of the entry of this order, the Secretary of the Interior, in conjunction with the intervenors-appellees, shall file with the court a hold harmless agreement that will protect appellants from any consequences resulting from significant restrictions upon subsistence uses by appellants of their lands. See U.S.C. 3120. This panel shall retain jurisdiction of the matter for the purpose of reimposing a temporary stay should the panel disapprove the form and substance of the hold harmless agreement. Upon submission for decision, the merits panel shall determine whether the hold harmless agreement should remain in effect. This appeal is expedited. No prebriefing conference will be held. Appellants shall file their opening brief on or before June 28, 1985. Appellees shall file their answering briefs on or before July 19, 1985. Appellants may file a reply brief within 7 days of the service date of appellee's briefs. No extensions of time will be granted. The Clerk shall calendar this case for oral argument in Seattle in September. sm
6/12/85	Filed aplt's waiver of add'l briefing, request for immediate transfer to merits panel, and request for immediate argument, (6/11), (CIVATT). jw
6/13/85	Filed aple's & Secretary of Interior's Hold Harmless Agreement, (CIVATT). jw
6/17/85	Filed aplt's objection to "Hold Harmless Agreement" (CIVATT) 6/14 -dmf-

DATE	PROCEEDINGS
6/18/85	Rec'd affidavit of Joseph G. Jorgensen in support of aplts' objection to "Hold Harmless Agreement." (CIVATT) -dmf-
6/18/85	Filed federal aplees' opposition to aplts' request for immediate transfer to merits panel and request for immediate payment. (CIVATT) 6/17 -dmf-
6/19/85	File intervenor-aplees' response to aplts' objection to "Hold Harmless Agreement." (CIVATT) 6/18 -dmf-
6/20/85	Rec'd affidavit of Charles C. Hughes, Phd., in support of objection to "Hold Harmless Agreement." (CIVATT) -dmf-
6/21/85	Filed feder aple's response to aplt's objection to hold harmless agreement, (6/20/85), (CIVATT). jw
6/21/85	Filed order (SNEED, NELSON, NORRIS) The panel has reviewed the hold harmless agreement submitted on June 13, 1985, by the Secretary of the Interior, in conjunction with the intervenor-appellees, in compliance with this court's June 6, 1985 order. The panel has concluded that, with two exceptions, the hold harmless agreement is adequate to protect appellants' interests at this stage of the proceedings. The panel that decides this appeal on its merits may review the agreement to determine its continued adequacy. This panel makes the following two changes in the agreement: (1) Paragraph 4 is amended to provide that appellants have the initial burden to establish only that a significant restriction upon subsistence uses has been proximately caused by exploratory drilling or related operations of intervenors-appellees. Once ap-

DATE	PROCEEDINGS
	pellants have established the existence of a subsistence restriction, the burden shall shift to intervenors-appellees to establish that the responsibility lies with a particular company or companies. If intervenors-appellees are unable to do so, then all companies conducting operations in the relevant lease area of the type that caused the restriction shall be jointly and severally liable for damages to appellants. (2) Paragraph 7 is amended to provide that the hold harmless agreement shall remain in effect until further order of this court. Appellants' waiver of additional briefing, request for immediate transfer to merits panel, and request for immediate argument are denied. The parties shall abide by the briefing schedule established in the June 6, 1985 order. sm
7/1/85	Filed as of June 28, orig & 15 Aplt's opening briefs and 5 excerpts of record in 2 volumes. (38 pages). 6/27 tu
7/9/85	Filed, as of Jul 5, intervenor-aplees' (Arco Alaska & Exxon) petition for clarification or reconsideration of order dated 6/21/85. (CIVATT) 7/5 -dmf-
7/22/85	Filed order (NELSON, NORRIS) The motion by intervenor-appellees for clarification or reconsideration of this court's order of June 21, 1985, is granted in part. Paragraph 7 of the hold harmless agreement remains intact in all respects except as to the time for termination of the agreements. As directed in the June 21 order, paragraph 7 is amended to provide that the hold harmless agreement shall remain in effect until further order of this court. In all other respects, the motion for clarification or reconsideration is denied without prejudice to

DATE	PROCEEDINGS
	renewal of the motion before the panel that considers this case on its merits. sm
7/23/85	Filed as of 7/22, orig and 15 copies of aple's (FEDERAL) brief, (50 pgs), 7/19. (PANEL).
7/23/85	Filed as of 7/22, orig and 15 copies of aple's (AMOCO PRODUCTION) brief and 5 copies of aple's supplemental excerpts of record, (in 2 volumes), (49 pgs), 7/19, (PANEL). jw
7/25/85	Filed motion (City of St. Paul) for leave to file amicus brief/memorandum in opposition. (panel) 7/23 -dmf-
7/30/85	Filed 5 copies of aplt's corrected excerpts, vol. 1 jw (DO NOT USE EXCERPTS VOL. JUNE 28, 1985)
8/1/85	Rec'd as of 7/31, orig and 15 copies of aplt's reply brief, (32 pgs), (7/30, (PANEL).
8/5/85	Filed order (DEPUTY CLERK) The City of St. Paul's motion to file an amicus brief/memorandum in opposition to appellants' motion for preliminary injunction is GRANTED. sm
8/23/85	Filed aplee's motion fixing the expiration date of the hold harmless agreement. (panel) 8/22 -dmf-
8/28/85	Filed "Stipulation" that the Hold Harmless Agreement filed by federal defendants and intervenors appellees, Amoco Production, et al will terminate to (panel). jr 8/26/ & 27/85
9/4/85	CAUSE ARGUED & SUBMITTED TO: PREGERSON, ALARCON, CJJ, DIMMICK (W. WASH.), DJ. -dmf-
10/25/85	ORDERED OPINION (ALARCON) FILED AND JUDGMENT TO BE FILED AND ENTD.

DATE	PROCEEDINGS
10/25/85	FILED OPINION – REVERSED AND REMANDED. jw (Judge Dimmick Dissenting)
10/25/85	FILED AND ENTERED JUDGMENT. jw
11/7/85	Filed stipulated motion for limited stay of the mandate (PANEL) sm
12/3/85	Rec'd, as of 11/29/85, intervenor/aples letter dated 11/27/85 re: stipulated motion for limited stay of mandate, etc to (panel). jr
12/26/85	Filed order (Pregerson, Alarcon & Dimmick) the stipulated motion for limited stay of mandate filed 11/7/85 is dismissed as moot. The mandate in the above-entitled case shall be filed forthwith.
12/26/85	Mandate Issued

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. N 83-03-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

JAMES S. WATT, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

INTRODUCTION

1. This action seeks to enjoin the Secretary of the Interior, James S. Watt, from holding Outer Continental Shelf Lease Sale 57. That lease sale will offer oil and gas companies about 2.4 million acres of Outer Continental Shelf land. The OCS land is located in Norton Sound. The lease sale is scheduled for March 15, 1983.

2. The complaint sets out two alternative legal theories why Secretary Watt should be enjoined from holding the sale. Both theories are based on the subsistence rights of Natives living in the Norton Sound region. The first theory is that Mr. Watt did not follow the procedures required by Section 810 of the Alaska National Interest Lands Conservation Act. This section provides a detailed set of procedures that must be followed before Secretary Watt leases public lands.

3. The second legal theory is based on the Alaska Native Claims Settlement Act. ANCSA terminated certain Native hunting and fishing rights. The language of ANCSA, and the historical connection binding it to Section 810 of ANILCA, establish that the rights extinguished by ANCSA are the same rights protected by Section 810. If Section 810 does not apply to OCS land, ANCSA does not apply. In this case, the Natives retain aboriginal claims to the OCS land, which must be adjudicated before any lease sale can take place.

PARTIES

4. Plaintiff Native Village of Gambell and Plaintiff Native Village of Stebbins are Indian tribes or bands organized under the Indian Reorganization Act. 28 USC § 461 *et. seq.* The governing bodies of these villages are recognized by the Secretary of the Interior. The Native village of Gambell is located on St. Lawrence Island. The Native village of Stebbins is located on the Southern shore of Norton Sound on Cape Stephens.

5. Defendant James S. Watt is the Secretary of the Interior. He officially resides in the District of Columbia. The Department of the Interior is the federal agency responsible for Lease Sale 57.

JURISDICTION AND VENUE

6. This action arises under the Constitution, laws, and treaties of the United States. It involves claims in excess of $10,000. Jurisdiction is based on 28 USC § 1331; 28 USC § 1332; 28 USC § 1337; 28 USC § 1346; and 28 USC § 1362. Venue properly lies in the District Court of Alaska under 28 USC § 1391(b); 28 USC § 1391(e)(2); and 28 USC § 1391(e)(3).

STATEMENT OF THE CASE

7. The Bureau of Land Management published a Notice of Sale for Outer Continental Shelf Lease Sale 57 on February 10, 1983. The notice announces that 418 blocks of land will be offered for oil and gas lease. The blocks consist of 2.4 million acres of Outer Continental Shelf land located off the Alaskan coast. The lease sale is scheduled for March 15, 1983. It will permit successful bidders to explore for, develop, and produce oil and gas.

8. The lease sale and the resulting oil development will injure the subsistence economy of the Norton Sound region. The subsistence economy is the process by which Natives harvest local fish and game and then directly consume it, exchange it on local trade networks, or sell it for cash. The subsistence economy is essential for the continued existence of Natives living in the Norton Sound basin. For example, over ninety percent of the diet of villagers living in Gambell consists of locally-harvested walrus and other marine mammals, and the remainder of the diet is largely composed of other subsistence animals.

9. Oil and gas development will harm the subsistence economy in two ways. It will reduce the animal populations forming the basis of the subsistence economy. And it will decrease the Natives' ability to purchase equipment needed to harvest the resource. These two effects will diminish the output of the subsistence economy, threatening the existence of Native villagers.

10. Secretary Watt has not followed the procedures outlined in Section 810 of the Alaska National Interest Lands Conservation Act in preparing the Norton Sound lease sale. Section 810 is designed to protect the subsistence economy which supports Alaskan Natives. It requires the Secretary to make certain findings and to effectuate certain procedures before leasing or disposing of public lands.

11. Members of the Plaintiff organizations, and their lineal ancestors, have used and occupied substantial portions of the lands to be conveyed in the Norton Sound lease sale. The Plaintiffs claim traditional hunting and fishing rights. These rights include the right to hunt seal, walrus, and whale, and the right to fish for herring and salmon.

12. The tribal councils of the Plaintiff villages have not consented to the leases affecting the land owned, used, or occupied by them.

First Cause of Action

13. Secretary Watt has not followed the procedures or made the findings required by Section 810 of the Alaska National Interest Lands Conservation Act. This failure injures the Plaintiffs' interest.

Second Cause of Action

14. Secretary Watt intends to lease lands encumbered by Native claims. The lease would injure the plaintiffs' possessory interest, and would violate the trust responsibilities Secretary Watt owes to the Alaskan Natives.

RELIEF

The plaintiffs request the following relief:

1. That this court issue a preliminary injunction enjoining Secretary Watt from leasing the Norton Sound basin until such time as:

a. He makes the findings and determinations required by Section 810 of ANILCA or, alternatively;

b. This court adjudicates Native claims to the Norton Sound basin.

2. That Secretary Watt and his subordinates be permanently enjoined from leasing the Norton Sound basin.

3. That the plaintiffs be awarded costs and attorneys fees.

Respectfully submitted,

ALASKA LEGAL SERVICES CORPORATION

by: /s/ DONALD COOPER

Donald Cooper
Bruce Horowitz
Joan Lee
Robert Hickerson
Heather Noble
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. 985-201 CIV

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs in this action, the Native Village of Gambell and Nunam Kitlusisti, seek to permanently enjoin all activities resulting from Federal Oil and Gas Lease Sale 83 for the Navarin Basin, Alaska. Plaintiffs also seek an Order declaring Sale 83 to be invalid and any leases resulting from that sale to be null and void.

2. Plaintiffs raise two arguments in support of their claim that Sale 83 is invalid. First, the Secretary of the Interior failed to comply with the requirements of section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120, in selecting the areas offered in Sale 83. The second argument is that Title VIII and section 810 of ANILCA impose a trust responsibility on the Secretary to minimize the impact of oil and gas leasing, exploration, and development on Native subsistence activities. By leasing lands of low or marginal oil and gas potential, the Secretary breached this trust responsibility.

3. Plaintiffs seek to invalidate Sale 83 and leases resulting from that sale in order to protect their subsistence hunting and fishing rights. In holding Sale 83, the Secretary of the Interior ignored congressional directives that he lease in a manner that caused the least adverse impact on subsistence. Oil exploration and development activities on the leased tracts present an unreasonable threat of injury to primary subsistence resources needed by residents of St. Lawrence Island and western Alaska.

PARTIES

4. Plaintiff Native Village of Gambell is an Indian tribe or band reorganized under the Indian Reorganization Act as amended, 25 U.S.C. § 461 *et seq.*. The governing body of this village is recognized by the Secretary of the Interior. The Native Village of Gambell is located on St. Lawrence Island in the Bering Sea.

5. Plaintiff Nunam Kitlusisti is a non-profit corporation organized under the laws of the State of Alaska. It represents subsistence users throughout the Yukon-Kuskokwim Delta of southwest Alaska, working on resource development and environmental issues which affect their subsistence way of life. Nunam Kitlusisti is governed by a Board of Directors nominated by constituent Yukon-Kuskokwim villages. Its offices are located in Bethel, Alaska.

6. Defendant Donald P. Hodel is the Secretary of the Interior. He is the official successor to William P. Clark, who was Secretary of the Interior at the time Lease Sale 83 was held. Secretary Hodel is responsible for administering the Outer Continental Shelf leasing program established pursuant to the Outer Continental Shelf Lands Act as amended, 43 U.S.C. § 1331 *et. seq.*. Defendant Donald P. Hodel officially resides in Washington, D.C.

JURISDICTION AND VENUE

7. This action arises under the Constitution, laws, and treaties of the United States. Jurisdiction is proper under 28 U.S.C. § 1331; 28 U.S.C. § 1337; 28 U.S.C. § 1346; 28 U.S.C. § 1362; and 16 U.S.C. § 3120. Venue properly lies in the District Court for the District of Alaska under 28 U.S.C. § 1391(b), (c), and (e).

STATEMENT OF THE CASE

8. On March 16, 1984, the Secretary of the Interior published notice of his intent to sell some 3,700 blocks in the Navarin Basin southwest of St. Matthew Island in the Bering Sea. 49 Fed. Reg. 10,058 (March 16, 1984). The sale was held on April 16, 1984. As a result of this sale, some 185 leases were issued to successful bidders.

9. The Navarin Basin is home to many primary subsistence resources consumed by residents of Gambell and the coastal villages of the Yukon-Kuskokwim Delta region. Among other things, it is the winter feeding ground of the bowhead whale, an endangered species central to the subsistence culture of the people of Gambell. The migration routes of various species of marine mammals, fish, and migratory birds traverse the Navarin Basin area. These marine mammals, fish, and migratory birds provide more than 80% of the food consumed by residents of Gambell and villages in the Yukon-Kuskokwim region.

10. Oil and gas exploration and development in the Navarin Basin will harm the subsistence economies of Gambell and the villages of the Yukon-Kuskokwim Delta region. The subsistence economy is the process by which Alaskan Natives harvest local fish and game and then directly consume it, exchange it on local trade networks, or sell it for cash. For the people of Gambell and the villages of the Yukon-Kuskokwim Delta region, the subsistence economy is essential for their survival.

11. Oil and gas exploration and development will harm the subsistence economies of the affected villages in a number of ways. For example, oilspills will directly injure marine mammals, fish, and migratory birds needed for subsistence; noise from exploration and development activities will cause subsistence resources to alter their traditional migration patterns, thereby reducing their availability for subsistence users; and inflation caused by oil and gas activity will decrease Natives' ability to purchase equipment needed to harvest subsistence resources.

12. The Secretary of the Interior did not follow the requirements of section 810 of the Alaska National Interest Lands Conservation Act in preparing for Lease Sale 83. Section 810 is designed to protect rural Alaskan Natives' opportunity to pursue their customary and traditional subsistence way of life.

13. In the context of OCS leasing, section 810 of ANILCA requires the Secretary to:

(a) perform detailed subsistence impact studies;
(b) select areas to be leased in a manner that minimizes the conflict between oil and gas and subsistence; and
(c) determine whether leasing any of the offered areas may significantly restrict subsistence uses or resources, and if it may, the Secretary must:
    (1) give notice and hold hearings in the affected areas,
    (2) consult with local fish and game advisory committees, and
    (3) make specific detailed findings regarding the impact of the proposed lease sale on subsistence uses and resources.

14. Title VIII of ANILCA was passed for the benefit of Alaskan Natives. It imposes a trust responsibility on the Secretary to manage lands, including the OCS, in a manner that will cause the least adverse impact on Native subsistence users and resouces.

FIRST CAUSE OF ACTION

15. The Secretary of the Interior did not comply with section 810 of ANILCA in determining to offer the 3,700 blocks for lease in the Navarin Basin. As such, the sale was unlawful, and the leases resulting from that sale are invalid.

SECOND CAUSE OF ACTION

16. By failing to comply with the section 810 requirement that he select blocks in a manner designed to minimize the conflict between oil and gas activities and subsistence, the Secretary breached his trust obligation to ensure that oil and gas activities cause the least adverse impact on subsistence uses and resources.

PRAYER FOR RELIEF

17. Plaintiffs request the following relief:

(a) That this court enter an Order enjoining the Secretary from authorizing, permitting, or otherwise allowing any lessee from conducting any exploration or development activities on their Sale 83 lease(s);

(b) That this court enter an Order declaring Sale 57 to be null and void and any leases resulting therefrom to be equally invalid;

(c) That this court enter an Order awarding plaintiffs their costs and reasonable attorneys fees; and;

(d) That this court grant plaintiffs such other relief as would be just and equitable.

Respectfully submitted this 25th day of April, 1985.

ALASKA LEGAL SERVICES CORPORATION

/s/ JAMES A. BAMBERGER

James A. Bamberger
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. N83-003-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

ARCO ALASKA, INC., *et al.*, DEFENDANT-INTERVENORS.

AFFIDAVIT OF EARL D. STOUT
EXHIBIT E

AFFIDAVIT OF EARL D. STOUT

THE STATE OF TEXAS
COUNTY OF HARRIS

The undersigned affiant, Earl D. Stout, personally appeared before me, Charles Raymond LeMay, Notary Public in and for the County of Harris, state of Texas, on this 17th day of April 1985, and deposes and states to the best of his information and belief:

1.

I am the Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's offshore exploration programs in Alaska and the Pacific, including the area covered by Sale 57 in the Norton Sound.

I have held this position since the spring of 1982, and am thus intimately familiar with Exxon's Norton Sound activities since the inception of this lawsuit.

2.

Exxon acquired 41 leases at Sale 57, in March of 1983, at a cost in excess of $258,000,000. Geological and geophysical costs and lease rentals raise the net bonus cost of acquisition by in excess of $12,400,000.

3.

During the summer of 1983, Exxon engaged in site clearance, a type of seismic activity, of roughly ten blocks on which it considered, at that time, that exploratory drilling might possibly occur during the 1984 exploration season. During the summer of 1984, Exxon continued its Norton exploration by drilling two exploratory wells, at a cost of approximately $16,000,000, on its Sale 57 leases. Exxon also conducted a seismic program on its Norton leases during the 1984 open water season. Exxon conducted all of this exploration in complete compliance with all applicable laws and regulations governing OCS activities, under plans and permits approved by the agencies responsible for implementing the statutory scheme. To the best of my knowledge and belief, no adverse effects whatsoever, whether environmental or economic, have resulted from any of the industry activity, nor has any party complained of any such adverse effects as a result of exploratory activities since the sale occurred in 1983.

4.

During the 1985 drilling season, Exxon plans to drill two additional wells on its Norton leases. Both well locations are in the St. Michael Protraction Area; one is on Block 54

and the other on Block 361. According to the Environmental Impact Statement for Sale 57 and the draft for the upcoming Sale 100, neither of these blocks is located in an area of particular environmental sensitivity. Both blocks are at least 24 miles from shore.

5.

Exxon plans to begin drilling the first of these wells on or near June 1. Commencement of the second is currently planned for mid to late July. Present estimates require a minimum of 45 days to drill each well, with further time required for testing should hydrocarbons be encountered. Time is of the essence due to the limited drilling window available in Alaska; because of the seasonal and climatic operating conditions in the Norton Sound, any delay will preclude the drilling of the second well. Inability to proceed to the drilling of the second well during the 1985 season as currently scheduled may, because of lost efficiencies related to timing, render the drilling of the second well at a later date uneconomic. Such inability to expeditiously evaluate the vital national resource reserves potentially underlying these Norton leases will cause enormous waste not only to Exxon as a company, but to the public at large as well.

6.

Exxon's Plan of Exploration (POE) and accompanying Environmental Report for its Sale 57 leases received the approval of the Minerals Management Service (MMS) on December 28, 1983. The state of Alaska approved Exxon's certification that all activities conducted under the POE would be conducted consistently with the Alaska Coastal Management Program on April 25, 1984. Applications for Permits to Drill (APDs) the two wells planned for the 1985 season were filed with the MMS on February 21 and March 20, 1985 pursuant to 30 C.F.R. § 250.36. Approval

of the APDs is expected in the next few weeks. Publication of the final National Pollutant Discharge Elimination System (NPDES) Permit for the Norton Sound area is expected imminently. Issuance of this permit and approval of the Applications for Permit to Drill are the sole remaining regulatory procedures required prior to Exxon's spudding of the first well planned.

7.

The only seismic activity planned relative to exploration of Exxon's Sale 57 leases consist of site clearance of three blocks preparatory to the drilling of the two exploratory wells described above. This seismic work is necessary to clear the area of any potential sea floor instabilities and to ensure safe operating conditions on the lease block in question. Bottom coring "shallow" geologic surveys and the "high resolution" seismic programs which use a small energy source are required pursuant to the OCS Orders governing operations on the Alaska OCS. (Alaska OCS Region, OCS Order 2.1.3.) "High resolution" seismic programs, with their small energy source, have a far more limited range than the "deep seismic" surveys which companies typically perform prior to a lease sale to determine the presence of potential hydrocarbon-bearing structures.[1]

8.

Should drilling be delayed, and as a function of any delay, Exxon will face losses which now approximate $4,000,000, and which will rise to nearly $10,000,000 by May 30, 1985, from existing contract commitments alone.

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[1] Exxon (as well as other companies) may also conduct deeper seismic in the Norton area in preparation for OCS Sale 100. These operations are not related to Exxon's current exploration of its Sale 57 tracts.

Upon departure of the drilling rig from Seward, currently scheduled for May 23, Exxon's exposure, in the event of any delay, will escalate dramatically by at least $2,275,000. These cancellation and damages costs will be in addition to the even larger, and potentially immeasurable, losses that Exxon will suffer if unable to evaluate the oil and gas potential of its already enormous investment, in the form of lease bonuses, rental payments, 1984 drilling costs, geological and geophysical expenditures, and the time value of money associated with all of the above, in its Norton Sound leases.

9.

For all of the above reasons, since any delay caused by issuance of a preliminary injunction will result in enormous and irreparable damage, Exxon should be allowed to proceed, as scheduled and without delay, in its 1985 exploration of its Sale 57 leases in Norton Sound.

/s/ EARL D. STOUT,
Earl D. Stout, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 17TH DAY OF APRIL 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ CHARLES RAYMOND LEMAY
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A85-184-Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND THE PEOPLE OF THE VILLAGE OF STEBBINS, AN ALASKAN NATIVE IRA ASSOCIATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

ARCO ALASKA, INC., *et al.*, INTERVENOR-DEFENDANTS.

AFFIDAVIT OF HUGH P. BUSHNELL

AFFIDAVIT OF HUGH P. BUSHNELL

THE STATE OF TEXAS
COUNTY OF HARRIS

The undersigned affiant, Hugh P. Bushnell, personally appeared before me, Vicky Jackson, Notary Public in and for the County of Harris, state of Texas, on this 30th day of April 1985, and deposes and states to the best of his information and belief:

1.

I am the Operations Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's offshore exploration operations in Alaska and the Pacific, including the area covered by Sale 57 in the Norton Sound. I have held positions within the Alaska/Pacific

Division since the summer of 1978, and am thus intimately familiar with Exxon's Norton Sound activities since the inception of this lawsuit.

2.

Exxon acquired 41 leases at Sale 57, in March of 1983, at a cost in excess of $258,000,000. Geological and geophysical costs and lease rentals raise the net bonus cost of acquisition by in excess of $12,4000,000.

3.

During the summer of 1983, Exxon engaged in site clearance, a type of seismic activity, of roughly ten blocks on which it considered, at that time, that exploratory drilling might possibly occur during the 1984 exploration season. During the summer of 1984, Exxon continued its Norton exploration by drilling two exploratory wells, at a cost of approximately $16,000,000, on its Sale 57 leases. Exxon also conducted a seismic program on its Norton leases during the 1984 open water season. Exxon conducted all of this exploration in complete compliance with all applicable laws and regulations governing OCS activities, under plans and permits approved by the agencies responsible for implementing the statutory scheme. To the best of my knowledge and belief, no adverse effects whatsoever, whether environmental or economic, have resulted from any of the industry activity, nor has any party complained of any such adverse effects as a result of exploratory activities since the sale occurred in 1983.

4.

During the 1985 drilling season, Exxon plans to drill two additional wells on its Norton leases. Both well locations are in the St. Michael Protraction Area; one is on Block 54

and the other on Block 361. According to the Environmental Impact Statement for Sale 57 and the draft for the upcoming Sale 100, neither of these blocks is located in an area of particular environmental sensitivity. Both blocks are at least 24 miles from shore.

5.

Exxon had originally planned to begin drilling the first of these wells on or near June 1, with the second planned for mid to late July. An unusually harsh Alaska winter, resulting in a later than normal ice break-up in the Norton Sound, has pushed the projected spud date for the first Norton well to mid-June and that of the second well to late July or early August. Estimates require a minimum of forty-five (45) days to drill each well, with further time required for testing should hydrocarbons be encountered. As this year's ice conditions demonstrate, time is of the essence in scheduling exploratory activities in Alaska. Seasonal and climatic operating conditions result in an already naturally limited drilling window. Any further delay will preclude the drilling of the second well. Inability to proceed to the drilling of the second well during the 1985 season as currently scheduled may, because of lost efficiencies related to timing, render the drilling of the second well in another season uneconomic. Such inability to expeditiously evaluate the vital natural resource reserves potentially underlying these Norton leases will cause enormous waste not only to Exxon as a company but to the public at large as well.

6.

Should drilling be further delayed, and as a function of any delay, Exxon faces losses which now approximate $4,210,000, and which will rise to nearly $10,000,000 by mid-June, from outstanding contract commitments alone. Upon departure of the drilling rig from Seward, Exxon's

exposure, in the event of further delay, will escalate dramatically by at least $2,275,000. This departure date, originally scheduled for May 16, has already been delayed until early June, as outlined above, due to the delay in commencement of the Norton open water season. These cancellation and damage costs will be in addition to the even larger losses that Exxon will suffer if unable to evaluate the oil and gas potential of its already enormous investment, in the form of lease bonuses, rental payments, 1984 drilling costs, geological and geophysical expenditures, and the time value of money associated with all of the above, in its Norton Sound leases.

7.

Each day that Exxon endures the uncertainty associated with the pending preliminary injunction motion entails ever increasing losses resulting from the perpetuation of existing commitments. Exposure due to these commitments could be significantly minimized, were the court to issue its decision on the pending motion expeditiously. Savings to Exxon which would result from an expedited decision approach $21,000 on a per diem basis. Conversely, with each day of uncertainty and delay, Exxon invests yet another $21,000 in its Norton Sound leases.

8.

For all of the above reasons and in the interest of economy, efficiency, and equity, Exxon requests that an expedited decision be issued in the case.

/s/ HUGH P. BUSHNELL,
Hugh P. Bushnell, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 30TH DAY OF APRIL 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ VICKY JACKSON
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL., INTERVENOR-DEFENDANTS.

AFFIDAVIT OF EARL D. STOUT
EXHIBIT A

AFFIDAVIT OF EARL D. STOUT

The State of Texas
County of Harris

The undersigned affiant, Earl D. Stout, personally appeared before me, Charles Raymond LeMay, Notary Public in and for the County of Harris, state of Texas, on this 8th day of May 1985, and deposes and states to the best of his information and belief:

1.

I am the Manager of the Alaska/Pacific Exploration Division of Exxon Company, U.S.A., a division of Exxon Corporation. In this capacity, I supervise all of Exxon's

petroleum exploration programs for onshore and offshore Alaska including the area covered by Outer Continental Shelf (OCS) Lease Sale 83—Navarin Basin. I have held this position since the spring of 1982 and am thus intimately familiar with Exxon's participation in Sale 83 and its planned exploration activities in the Navarin Basin.

2.

I participated in and actually supervised the bidding process employed by Exxon's Alaska/Pacific Division in connection with Sale 83. As a result of Exxon's efforts, it was awarded 61 leases at Sale 83, which was held on April 17, 1984, for a net bonus and rentals cost in excess of $167,000,000. Exxon's pre-lease sale costs (geological and geophysical data acquisition and processing, overhead, research, and evaluation) associated with Sale 83 make Exxon's total net acquisition cost approximately $208,000,000.

3.

Immediately following Sale 83, Exxon initiated preparatory activities necessary to allow it to permit exploratory drilling in the 1985 drilling season. During the summer of 1984, Exxon conducted site clearance activities, a type of shallow seismic survey, over two geologic prospects (roughly 14 lease blocks) in the Navarin Basin on which Exxon was considering exploratory drilling during the 1985 exploration season. These site clearance activities cost Exxon approximately $1,138,000. At the same time, Exxon arranged for preparation of an environmental report and orientation program required by Minerals Management Service (MMS) regulations (30 C.F.R. § 250.34) and a stipulation included in the leases granted to Exxon. To date, Exxon has paid more than $59,000 for the preparation of this program. On November 21, 1984,

Exxon submitted its Navarin Basin Plan of Exploration (POE), Environmental Report, and emergency response plans to the MMS in Anchorage.

4.

I am informed that following Exxon's submission of its POE on November 21, 1984, the MMS, on November 28, 1984, deemed Exxon's POE completed and forwarded it to the state of Alaska and other federal agencies for review. I am further informed that the MMS notified local communities, individuals, and groups who have previously expressed an interest in reviewing and commenting on exploration plans for the Navarin Basin, including Nunam Kitlusisti, of the submission of Exxon's POE. On December 28, 1984, the MMS, after preparing an Environmental Assessment which included an evaluation under Section 810 of ANILCA, approved Exxon's POE within the thirty (30)-day review period proscribed by the Outer Continental Shelf Lands Act, as amended, (OCSLA). Subsequently, on January 14, 1985, the state of Alaska after considering comments by Nunam Kitlusisti, the cities of St. Paul and Nome, and the Bering Straits Coastal Resource Service Area Board concurred in Exxon's finding that the proposed activities are consistent with the Alaska Coastal Management Program (ACMP) which specifically includes consideration of subsistence uses.

5.

Upon receipt of MMS's approval of Exxon's POE, Exxon proceeded to implement its 1985 Navarin Basin drilling program. This program includes an initial well on Exxon's Redwood Prospect (OCS-Y 0559) with contingency plans to drill a second well on this prospect (OCS-Y 0592) depending on the results of the inital well. Exxon is

planning to commence its first well on or about June 4, 1985. To accomplish this drilling program, Exxon has had to commit to contracts for, among other things, the construction of a supply base on St. Paul Island, a support barge, helicopters, supply boats, and a drilling vessel. Exxon estimates that if its 1985 Navarin drilling program is enjoined by the Court, it will cost Exxon approximately $20,450,000 as of April 29, 1985, and that these costs will continue to escalate until June 4, 1985 when Exxon will be obligated to pay a total of approximately $23,250,000 in either cancellation or operating charges even though Exxon is precluded from commencing its operations. In the event, Exxon's 1985 drilling operations are delayed rather than cancelled, it will still incur operating charges of approximately $123,000 per day of delay. Any such delay also increases the possibility that Exxon's drilling program will be conducted during inclement weather and that the cost of this drilling program will dramatically escalate. In addition to Exxon's own drilling program, we are also negotiating to participate in up to three additional 1985 Navarin Basin wells to be drilled and operated by two other oil companies. Exxon assumes these other companies will incur similar cancellation or operating charges if their 1985 Navarin Basin drilling programs are cancelled or delayed as a result of the injunction sought by the Village of Gambell and Nunam Kitlusisti.

6.

Exxon is also planning to conduct site clearance activities over three Navarin Basin geologic prospects (roughly 32 lease blocks) during the summer of 1985. Exxon anticipates that these shallow seismic activities will commence in June. Exxon is currently obligated to pay its seismic contractor's mobilization and demobilization costs

($220,000) plus a minimum contract payment equal to sixty (60) days of operations (approximately $1,133,000) for a total minimum contract cost of about $1,353,000.[1]

7.

In addition to these cancellation or operating charges, Exxon and the other oil companies planning to drill in the Navarin Basin in 1985 will effectively be deprived of a year of their ten-year oil and gas leases. Equally important, the cancellation of these 1985 Navarin Basin drilling programs will impede the national interest in the expeditious exploration of a very prospective frontier oil and gas basin.

8.

Exxon has received, to date, all of the state and federal approvals required to commence its 1985 drilling program with the exception of the final permit to drill. Exxon submitted its application for this permit to drill on March 26, 1985. Exxon will be submitting supplementary materials requested by the MMS in the next few days. Once these materials are received, it is my understanding that any delay in the issuance of this permit will be due solely to this suit.

For all of the above reasons and since any delay caused by issuance of a preliminary injunction will result in enormous and irreparable damage both to Exxon and the na-

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[1] Exxon is also planning to conduct a deep seismic survey in the Navarin Basin in preparation for OCS Sale 107, which is scheduled for September 1986. This deep seismic survey is not related to Exxon's current exploration of its Sale 83 tracts.

tional interest, Exxon should be allowed to proceed, as scheduled and without delay, with its 1985 exploration drilling program for its Sale 83—Navarin Basin leases.

/s/ EARL D. STOUT,
Earl D. Stout, Affiant

SUBSCRIBED TO AND SWORN BEFORE ME THIS 8TH DAY OF MAY 1985, AT HOUSTON, HARRIS COUNTY, TEXAS.

/s/ CHARLES RAYMOND LEMAY
Notary Public, State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL, AN ALASKAN NATIVE IRA ASSOCIATION, AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL., INTERVENOR-DEFENDANTS.

AFFIDAVIT OF DANA B. GRANNELL
EXHIBIT B

AFFIDAVIT OF DANA B. GRANNELL

State of Alaska) ss.
Third Judicial District)

Dana B. Grannell, being first duly sworn, deposes and states to the best of his knowledge and belief that:

1. I am the South Alaska Regional Exploration Manager and acting Executive Vice President for Exploration Operations, ARCO Alaska, Inc. (ARCO). I am responsible for ARCO exploration decisions in Alaska and supervise exploration activities both onshore and offshore Alaska. Consequently, I am familiar with all of ARCO's activities relative to the Navarin Basin OCS Lease Sale 83 (Lease Sale 83) conducted on April 17, 1984.

2. ARCO acquired all or part of thirty (30) lease tracts at Lease Sale 83 at a cost to ARCO in excess of $61,600,000 (including first year rentals). Geological and geophysical costs incurred in preparation for the Sale were in excess of $17,000,000. These costs include seismic work done in the Basin and ARCO's share of a COST well drilled in the Lease Sale 83 area which was operated by ARCO.

3. During the summer of 1984 ARCO incurred additional expenses in performing site clearance work for two of its drilling prospects in the Lease Sale 83 area. This activity is in the nature of seismic work and represented an expenditure of just over $600,000. Such site clearance is a necessary prerequisite to drilling.

4. The lease purchase and associated activities described above represent an investment in excess of $79,000,000 in the Navarin Basin and includes considerable seismic and drilling experience in the area. As a Navarin operator, ARCO has successfully conducted several types of exploration activities, all of which were brought to conclusion without any indication of environmental, economic or other adverse impact to anyone or any resource. To the best of my knowledge, ARCO has never received a complaint of nor any direct evidence of any adverse effects occasioned by its exploration activities in the Navarin Basin.

5. During the coming summer, ARCO intends to continue its exploration effort in the Lease Sale 83 area. ARCO, as operator for a group of eight companies, is proceeding with plans to drill an exploration well on Block 637, Official Projection Diagram NP1-7. Because of the extreme remoteness of the lease tracts in the Navarin Basin, planning efforts for this well began early. The need to develop extensive logistical support, including the use of specialized transport such as long range helicopters and construction of a remote operations base has dictated that

certain commitments be made as early as last fall. In November 1984 and in January 1985 ARCO committed to contracts for helicopter support and the construction of an aviation support base on St. Paul Island. To date, those decisions represent a sunk cost of almost $2,000,000. Another $300,000 has been spent in the acquisition of permits, telecommunications, wellheads and drilling equipment. These costs would not be recoverable in the event drilling could not proceed.

6. As is the case with the other support requirements, negotiations for the use of a suitable offshore drilling rig commenced last December. Drill rig costs represent a major portion of the total cost of ARCO's well. After several months of effort, ARCO entered into a contract for a drill rig which is currently drilling a well offshore California. ARCO's Navarin plans are to a certain extent tied to the completion of the California well but it is anticipated that well will be completed this month. Upon completion, plans call for immediate mobilization of the drill rig from California to ARCO's Navarin site. Because of the expense of mobilization and the degree of availability of these specialized drill rigs, there is a penalty for termination of the drilling contract. Given the present time estimates and mobilization requirements, if ARCO were prevented at this time from drilling its Navarin well, a termination penalty would be incurred. This penalty could be as high as $1.8 million.

7. ARCO is otherwise fully prepared to proceed with its well. All applicable permits have been acquired or are in final processing. These include authorization to discharge under the National Pollutant Discharge Elimination System and ARCO's Application for Permit to Drill (APD) which is expected to be received shortly. ARCO's Plan of Exploration (POE) was approved by the Minerals Management Service on January 23, 1985 and the consistency determination required by the Alaska Coastal Management Program was received on March 28,

1985. The consistency determination process afforded the local Coastal Management planning agency, Cenaliulriit, the opportunity to review, comment and to make recommendations on ARCO's plan. Only after satisfying the concerns of Cenaliulriit, specifically including issues related to subsistence matters, did the State of Alaska render its consistency determination. It should be noted that the Director of Cenaliulritt, Mr. Harold Sparck, is also the Director of Plaintiff, Nunam Kitlusisiti.

8. Should drilling be delayed, ARCO faces the loss of approximately $4 million in sunk costs. Due to the nature of the drill rig contract additional money must be committed shortly for other support services. The actual timing of these commitments is dependent on the mobilization of the drill rig from California but with the anticipated schedule these will need to be made prior to the end of this month. The cost of all commitments necessary for the well will escalate rapidly with the departure of the drill rig for Alaskan waters. Cancellation costs and associated damages will doubtless exceed significantly the level of the sunk costs described above.

9. ARCO's investment in the Lease Sale 83 area is enormous and any delay in drilling occasioned by issuance of an injunction would represent a devastating loss and irreparable damage to ARCO. Given the nature of frontier exploration and the present state of the oil and gas industry, a lost opportunity in 1985 could lead to a loss of the entire investment. ARCO should be allowed to proceed without delay with its planned Navarin drilling in 1985.

/s/ DANA B. GRANNELL

Dana B. Grannell

SUBSCRIBED TO AND SWORN BEFORE ME THIS 8TH DAY OF MAY 1985, AT ANCHORAGE, ALASKA.

/s/ BARBARA HURLEY
Notary Public in and for Alaska
My Commission Expires: 7/23/88

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-201 Civil

THE PEOPLE OF THE VILLAGE OF GAMBELL,
AN ALASKAN NATIVE IRA ASSOCIATION,
AND NUNAM KITLUTSISTI, A NATIVE INTERTRIBAL
ORGANIZATION, PLAINTIFFS,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR,
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR,
DEFENDANTS.

AMOCO PRODUCTION COMPANY, ET AL.,
INTERVENOR-DEFENDANTS.

AFFIDAVIT OF R. J. CRISWELL
EXHIBIT C

AFFIDAVIT OF R. J. CRISWELL

R. J. CRISWELL, being duly sworn, deposes and states to the best of his knowledge, information, and belief as follows:

1. I am the Western Division Production Manager for Amoco Production Company (Amoco). In this capacity, I manage and direct all of Amoco's offshore exploratory drilling programs with respect to Alaska and the Pacific, including the area covered by OCS Lease Sale 83 (Navarin Basin) in the Bering Sea offshore the state of Alaska.

2. This affidavit describes Amoco's long-standing commitment and preparation activities for its scheduled exploratory drilling program during 1985 in the OCS Lease Sale 83 area. In addition, it discusses the irreparable

harms that could be incurred by Amoco and the public at large with the issuance of an injunction prohibiting the exploratory drilling program which has been in the planning stages for over a year and its imminent implementation.

A. OCS SALE 83 (NAVARIN BASIN) AREA

3. The Navarin Basin lies approximately 300 miles from St. Lawrence Island and 400 miles from the west coast of mainland Alaska in the Bering Sea. The exploratory wells planned for the 1985 drilling season will be located in some of the most remote U.S. OCS waters ever drilled for U.S. oil and gas exploration. Because of weather conditions, ice conditions and the remoteness of the Navarin Basin, the planning, logistics, and required investments for this exploratory operation are significant. In the Navarin Basin ice prohibits exploratory drilling for all but about 7 months a year, 25 knot winds are common in winter, and heavy fog is present during the summer months. Hostile sea conditions most of the year make operating in this area of the U.S. OCS expensive and very demanding.

B. AMOCO'S LEASES IN OCS SALE 83 (NAVARIN BASIN) AREA

4. The U.S. Department of the Interior (DOI) held OCS Sale 83 on April 17, 1984. At the sale Amoco, both individually and jointly with partners, submitted bids on 82 tracts offered for lease. DOI accepted the bids submitted with respect to 47 of the 82 tracts (14 of the 47 successful bids are located in a buffer zone created by DOI as a result of a boundary dispute between the U.S. and the U.S.S.R. These leases have yet to be awarded to Amoco pending final decision by DOI to accept and award the leases.) At the time the 33 non-buffer zone leases were accepted by DOI, Amoco paid the sum of $123,332,900

for lease bonuses. The sum of $45,171,266, represents bonuses which will be paid by Amoco for the remaining 14 buffer zone leases when DOI decides they can be accepted. Therefore, Amoco has committed the net total sum of $168,504,166 for bonuses when DOI ultimately accepts all Amoco leases in the Navarin Basin.

5. Prior to lease sale itself on April 17, 1984, Amoco spent several million dollars acquiring geophysical data, information and in the processing of such data for the Sale 83 area. The monies expended include data and information, but also professional evaluations, interpretations, computer time, drafting, research, management and supervision.

C. AMOCO'S 1985 EXPLORATORY DRILLING PROGRAM FOR OCS SALE 83 (NAVARIN BASIN) AREA

6. Amoco's plans for the 1985 drilling season are to begin the mobilization of equipment starting mid-May 1985 and to spud its first well during the first week of June, 1985. Amoco anticipates drilling between three (3) and four (4) wells during 1985 and an additional 3 wells during 1986 in this area.

All of the required equipment and supplies for this operation has already been contracted for or committed to by Amoco. The following is a summary of the major equipment areas required for the operation. Amoco is contractually committed to this equipment which is currently scheduled to be in the Navarin Basin during early June, 1985. The dollar amounts reflect the minimum monetary obligation incurred by Amoco if an injunction was entered prohibiting activity and equipment has to be demobilized or returned without being used during the short drilling season.

A. *Drilling Rigs*—$10,500,000

Amoco will operate two semi-submersible drilling rigs during the 1985 drilling season, the Odeco Ocean Odyssey and the Sedco 708. Current plans are for both rigs to be mobilized to the Navarin during early June, 1985. The dollar amount indicated represents Amoco's financial commitment pursuant to the contracts if the rigs are not mobilized to the Navarin Basin.

B. *Marine Support*—$12,000,000

A fleet of vessels will be required to support the two Amoco operated drilling rigs. A 63,000 DWT bulkcarrier is being modified to function as an offshore warehouse (wareship) and will be mobilized to the Navarin Basin area by June 1. Diesel fuel and water have been loaded on a 47,000 DWT product tanker which is also enroute to the Navarin Basin area and is expected to arrive by June 1.

Four supply boats are either currently enroute to the Navarin Basin area or will soon be enroute from areas around the world. Two additional boats, which will stand-by near each rig, are currently being fitted with oil spill and rescue equipment in Dutch Harbor, Alaska. All vessels are either presently under contract or committed to by Amoco. The dollar amount shown reflects Amoco's financial responsibility in the event that the program is cancelled on or before June 1, 1985.

C. *Air Support*—$9,509,000

Two Boeing BV-234 Chinook helicopters are under contract to support industry drilling operations in the Navarin this drilling season. A helibase has also been constructed on St. Paul Island, which will be the origin for all helicopter flights to the drilling rigs. The dollar amount shown represents Amoco's financial responsibility for the helicopters in the event the program is cancelled before the helicopters are utilized.